



SONOMA LAND TRUST

---

**January 10 2007**

966 Sonoma Avenue  
Santa Rosa, CA 95404  
Tel: 707 526 6930  
Fax: 707 526 3001

[www.sonomalandtrust.org](http://www.sonomalandtrust.org)

**Douglas Bosco,  
Chairman, and  
Members of the Board of Directors  
California Coastal Conservancy  
1330 Broadway, 13<sup>th</sup> floor  
Oakland, CA 94612-2530**

**Subject: Sonoma Land Trust v. BBRRBR, LLC et al.  
Legal Action to Enforce the Lower Ranch Agricultural Conservation  
Easement**

**Dear Chairman Bosco and Members of the Board of Directors:**

The Sonoma Land Trust respectfully requests that the California Coastal Conservancy and the State of California join with us in the above-referenced legal action to enforce the terms of a Conservancy financed agricultural conservation easement over a 528 acre ranch in Sonoma County on the north side of Highway 37 near the Petaluma River known as "Lower Ranch." More generally, this case is a test of the enforceability of conservation easements in the face of a determined and well-financed attempt to use the protected property for a financially remunerative use that goes well beyond what the conservation easement allows.

**The Lower Ranch Agricultural Conservation Easement**

The Lower Ranch Agricultural Conservation Easement was established on September 18, 1989 pursuant to a March 3, 1986 contract between the California Coastal Conservancy and the Sonoma Land Trust.

Both the Conservancy and the Land Trust acted to buy down the economic value of the ranch so that it would permanently remain as agriculture and scenic open space. The ranch has been used as pasture and a hay farm for many decades – probably most of the 20<sup>th</sup> century.

A copy of the Lower Ranch Agricultural Conservation Easement is attached. A few relevant excerpts from the Easement follow:

"It is the purpose of this Easement to enable the property to remain in productive agricultural use for the production of food, fiber and plant material by preserving

and protecting in perpetuity its agricultural values, character and utility. To the extent that the preservation of the scenic and open space values of the Lower Ranch is consistent with such use, it is within the purpose of this Easement to protect those values.” (p.2)

“[the parties] recognize that changes in economic conditions, in horticultural technologies, in locally accepted farm and ranch management practices, and the situation of the [landowner] may dictate an evolution of agricultural uses of the Lower Ranch, consistent with the conservation purpose of this Easement.” (p.3)

“The following ... [is] permitted ... To continue ranching and farming activity consistent with the conservation purpose of this Easement, including the purchase, pasturing, grazing, feeding care and sale of livestock for the production of food and fiber, the planting, raising, harvesting and sale of agricultural crops of every nature and description; provided however, that such activities shall not result in significant degradation of any soil, surface or subsurface waters.” (exhibit B)

“The following ... shall be prohibited ... 1. The impairment of the protected values ... 2. The establishment of any nonagricultural commercial or industrial uses ... 9. ...uses otherwise permitted under this Easement which result in significant degradation of soil or water quality.” (exhibit C)

### **The Landowner's Actions**

The Lower Ranch is owned in fee by a closely held corporation, BBRRBR LLC, which in turn is controlled by the owner of the Port Sonoma Marina at the mouth of the Petaluma River. For convenience, we will refer to the owner here as Port Sonoma.

The chain of title is a bit complicated, but suffice it to say that Port Sonoma acquired the Lower Ranch with full knowledge of the Conservation Easement for a significantly reduced price that reflected the permanent restrictions imposed by the Easement.

A year ago September, Sonoma Land Trust learned that Port Sonoma was requesting an 800,000 cubic yard dredging permit from the Corps of Engineers and designating the Lower Ranch as the disposal site for the dredge materials. There was no prior consultation with Sonoma Land Trust, the holder of the Conservation Easement, nor did we receive any notice of the request for the permit. When we happened to learn of the proposed activity, Port Sonoma took the position, which they have since maintained, that the dumping of dredge materials on the ranch is an agricultural activity and that it is enhancing the soil and raising the level of the soil above the water table so that they can grow higher value crops. Further, because they claim this is a permitted agricultural activity, they said they need not consult with the holder of the Conservation Easement.



With the Corps poised to issue the permit, we reluctantly consented to one season of dredging (fall of 2005) as an experiment, provided that the Corp required Port Sonoma to produce a plan which would show how the continued deposition of dredge materials on Lower Ranch was consistent with the long term agricultural use of the land. The Corps issued the permit subject to that condition and a condition that Port Sonoma resolve its dispute with the Trust regarding the Easement before it disposed of further dredge material in 2006.

In May, 2006 Port Sonoma produced a Farm Use Plan prepared by their consultants, Zentner and Zentner which, if anything, demonstrated to us that the dumping of saline dredge materials on the Ranch would degrade the soil and is inconsistent with the long term agricultural use of the land. The Farm Use Plan further revealed the enormous scope of Port Sonoma's long term plans for the Ranch. The Plan talks about raising the level of the 528 acre Ranch by 4+ feet. In our view, which we believe is supported by their own plan, Port Sonoma plans to use Lower Ranch primarily as a commercial dredge material disposal site with agricultural window dressing. We don't believe the Easement permits what Port Sonoma proposes to do.

### **The Litigation**

Sonoma Land Trust retained legal counsel in early 2006 to advise us in this matter. Over the summer of 2006 we explored with Port Sonoma the idea of a geographically limited, monitored experiment over a number of years to test their assertions, but the discussions did not go anywhere. In our view, Port Sonoma wanted to do what it wanted to do, and it viewed the Conservation Easement as a nuisance. Having reached an impasse, Sonoma Land Trust filed suit in September 2006 to enforce the terms of the Conservation Easement.

Initially we did not seek a preliminary injunction because of the Corps' condition that the Lower Ranch not be used as a disposal site until the matter of the Conservation Easement was resolved. Port Sonoma, however, went to DC and prevailed upon the Washington office of the Corps to remove the condition on the theory that it was not the Corps' role to enforce the Conservation Easement or resolve matters of ownership. In late October, Port Sonoma resumed dumping without notice to the Trust.

Because of the Conservancy's remainder interest in the Easement and its more general interest in ensuring compliance with the conservation easements it funds, the Trust believes that the Conservancy is a proper—and important—party plaintiff to the lawsuit. We had hoped to ask the Board to join the lawsuit at the upcoming January 18 meeting.

Because Port Sonoma suddenly began dumping, we were forced to seek an emergency temporary restraining order and preliminary injunction. We believed the Conservancy's participation in those proceedings could make an enormous difference, and thus we used a special procedure to join the Conservancy as a nominal defendant temporarily, until the Board could meet to consider whether to join the suit as a plaintiff.

On December 12 there was a hearing on our request for a preliminary injunction. We greatly appreciated the appearance at the hearing by Deputy Attorney General Tara Mueller, although she was constrained by the fact that there was no way for your Board to have considered this matter in time for the hearing. The judge, noting that there were competing affidavits from the Land Trust's expert and Port Sonoma's expert before him, said in his view either party could prevail in this dispute and that therefore we had not met the burden of showing that there is a reasonable probability that we will prevail. But in denying the preliminary injunction he said it was a close call.

### **Public Policy Issues**

Conservation easements are the tool of choice when it comes to protecting the public interest in working landscapes. They have the benefit of leaving land in private ownership while advancing public policies such as the preservation of agricultural land, promoting sustainable forest practices and the protection of scenic open spaces. We do not have the figures, but we would guess that the Conservancy has put tens of millions of dollars into grants for the acquisition of conservation easements.

Another benefit of conservation easements is that they are not government imposed regulations; they are voluntary, bargained-for agreements for which compensation is paid. In the case of a subsequent landowner like Port Sonoma, the market value of the land has been reduced to enable the publicly desired activity – in this case farming – to continue, even when – particularly when - farming is not the most economically advantageous use of the property. Indeed, by a conservative estimate, Port Sonoma saved over \$1.7 million in its purchase of the Lower Ranch because of the Easement.

Sonoma Land Trust works to have cooperative and collaborative relationships with the owners of land over which we hold conservation easements, and we regularly monitor all our easements. The system of land protection through conservation easements, like the tax system, depends ultimately on a high level of voluntary compliance. But the system also depends upon the willingness and the capacity on the part of easement holders to enforce conservation easements when necessary.

Credible enforcement capacity is essential to the system. In this case, Port Sonoma has an enormous economic incentive to strain and break the Easement together with the



resources to push forward and the inclination to disregard the pesky Sonoma Land Trust which is saying, "Hey, wait a minute there is an agricultural conservation easement here and a commercial dredge material disposal site on the scale proposed does not look like agriculture to us." How valuable are conservation easements as a land protection tool if the holders of the easements do not have the willingness and the capacity to challenge perceived significant violations?

#### **Why We Named the Coastal Conservancy as a Party**

The Coastal Conservancy's participation in our lawsuit to enforce the Lower Ranch Agricultural Conservation Easement will underscore the public interests at stake. Because it was impossible as a result of your meeting schedule to secure your Board's consent to be joined as a plaintiff before a certain deadline, we named the Conservancy as a nominal defendant. However, we believe that the interests of Sonoma Land Trust and the interests of the Conservancy and the State of California in supporting the enforceability of conservation easements and the continuation of agriculture on the Lower Ranch are entirely congruent. We are hoping and requesting that you will actively join with us as a plaintiff in the action.

If for any reason you choose not to join with us, we will dismiss the Conservancy from the lawsuit and pursue the matter on our own with whatever other help we can find; but it would be a shame not to have you with us.

Port Sonoma is desperate to have the Conservancy removed from the suit. They have countersued naming both Sonoma Land Trust and the Coastal Conservancy as cross-defendants, alleging a conspiracy to "take" their property without just compensation. This countersuit is wholly without merit and an example of how the Port is trying to make the enforcement action as costly as possible to pursue. Port Sonoma has also attempted to have the Conservancy dismissed from the suit on the grounds that the Conservancy has no "standing" to enforce the Easement. This gambit emphasizes the broader significance of the lawsuit for the Conservancy: if accepted, Port Sonoma's argument would prohibit the Conservancy from enforcing virtually any of the conservation easements it has funded and in which it retains a residual property interest.

#### **The Ferry**

It has been alleged that our refusal to consent to the use of the Lower Ranch as a dredge material disposal site is intended to block Port Sonoma's publicly announced plans to develop a ferry terminal at the site of the current marina. It is not. Sonoma Land Trust has no position on the proposed ferry service itself. All we are saying is that however the Port Sonoma marina is developed, it should not be at the expense of the beautiful, extensively

protected landscape of farm land and wetlands along Highway 37 which includes the Lower Ranch and which is the result of an enormous investment of public funds and which the Coastal Conservancy, along with your many partners, has worked so hard to protect.

**Settlement Prospects**

Litigation is an expensive last resort. While our attempts to resolve this dispute without litigation did not prove successful, we anticipate that the Court will direct the parties to undertake further settlement discussions in the near future, and Port Sonoma has already indicated to the Court that it is interested in pursuing mediation. Given Port Sonoma's stated position and litigation tactics thus far, we do not currently see any basis for settling this matter short of a trial (with possible appeals). Nevertheless, particularly with the assistance of a mediator, it is conceivable that the parties could devise a path toward a settlement that protects the conservation values at stake. In any further settlement discussions, we would very much like to have the Conservancy and the State of California at our side in support of the public interest.

We are not asking your Board to resolve the lawsuit, and we do not believe that the Conservancy Board meeting is the appropriate forum for Sonoma Land Trust and Port Sonoma to hash out the issues. We are asking that you affirmatively enter into the lawsuit to protect the public interest and to buttress the capacity of your grantee to honor its responsibility to enforce the Lower Ranch Agricultural Conservation Easement according to its terms.

Thank you for your consideration of this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ralph Benson", is written over the typed name and title.

Ralph Benson  
Executive Director

**Attachments**

Map  
Lower Ranch Agricultural Conservation Easement

cc: Sam Schuchat, Executive Officer  
Marcia Grimm, Chief Staff Counsel  
Tara Mueller, Deputy Attorney General

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

The Sonoma Land Trust  
P.O. Box 1211  
Sonoma, CA 95476

AP# 68-130-13 (528± acres)

Recorded At Request Of

FATCO  
228A, 228B, 228C, 228D, 228E, 228F, 228G, 228H, 228I, 228J, 228K, 228L, 228M, 228N, 228O, 228P, 228Q, 228R, 228S, 228T, 228U, 228V, 228W, 228X, 228Y, 228Z, 228AA, 228AB, 228AC, 228AD, 228AE, 228AF, 228AG, 228AH, 228AI, 228AJ, 228AK, 228AL, 228AM, 228AN, 228AO, 228AP, 228AQ, 228AR, 228AS, 228AT, 228AU, 228AV, 228AW, 228AX, 228AY, 228AZ, 228BA, 228BB, 228BC, 228BD, 228BE, 228BF, 228BG, 228BH, 228BI, 228BJ, 228BK, 228BL, 228BM, 228BN, 228BO, 228BP, 228BQ, 228BR, 228BS, 228BT, 228BU, 228BV, 228BW, 228BX, 228BY, 228BZ, 228CA, 228CB, 228CC, 228CD, 228CE, 228CF, 228CG, 228CH, 228CI, 228CJ, 228CK, 228CL, 228CM, 228CN, 228CO, 228CP, 228CQ, 228CR, 228CS, 228CT, 228CU, 228CV, 228CW, 228CX, 228CY, 228CZ, 228DA, 228DB, 228DC, 228DD, 228DE, 228DF, 228DG, 228DH, 228DI, 228DJ, 228DK, 228DL, 228DM, 228DN, 228DO, 228DP, 228DQ, 228DR, 228DS, 228DT, 228DU, 228DV, 228DW, 228DX, 228DY, 228DZ, 228EA, 228EB, 228EC, 228ED, 228EE, 228EF, 228EG, 228EH, 228EI, 228EJ, 228EK, 228EL, 228EM, 228EN, 228EO, 228EP, 228EQ, 228ER, 228ES, 228ET, 228EU, 228EV, 228EW, 228EX, 228EY, 228EZ, 228FA, 228FB, 228FC, 228FD, 228FE, 228FF, 228FG, 228FH, 228FI, 228FJ, 228FK, 228FL, 228FM, 228FN, 228FO, 228FP, 228FQ, 228FR, 228FS, 228FT, 228FU, 228FV, 228FW, 228FX, 228FY, 228FZ, 228GA, 228GB, 228GC, 228GD, 228GE, 228GF, 228GG, 228GH, 228GI, 228GJ, 228GK, 228GL, 228GM, 228GN, 228GO, 228GP, 228GQ, 228GR, 228GS, 228GT, 228GU, 228GV, 228GW, 228GX, 228GY, 228GZ, 228HA, 228HB, 228HC, 228HD, 228HE, 228HF, 228HG, 228HH, 228HI, 228HJ, 228HK, 228HL, 228HM, 228HN, 228HO, 228HP, 228HQ, 228HR, 228HS, 228HT, 228HU, 228HV, 228HW, 228HX, 228HY, 228HZ, 228IA, 228IB, 228IC, 228ID, 228IE, 228IF, 228IG, 228IH, 228II, 228IJ, 228IK, 228IL, 228IM, 228IN, 228IO, 228IP, 228IQ, 228IR, 228IS, 228IT, 228IU, 228IV, 228IW, 228IX, 228IY, 228IZ, 228JA, 228JB, 228JC, 228JD, 228JE, 228JF, 228JG, 228JH, 228JI, 228JJ, 228JK, 228JL, 228JM, 228JN, 228JO, 228JP, 228JQ, 228JR, 228JS, 228JT, 228JU, 228JV, 228JW, 228JX, 228JY, 228JZ, 228KA, 228KB, 228KC, 228KD, 228KE, 228KF, 228KG, 228KH, 228KI, 228KJ, 228KK, 228KL, 228KM, 228KN, 228KO, 228KP, 228KQ, 228KR, 228KS, 228KT, 228KU, 228KV, 228KW, 228KX, 228KY, 228KZ, 228LA, 228LB, 228LC, 228LD, 228LE, 228LF, 228LG, 228LH, 228LI, 228LJ, 228LK, 228LL, 228LM, 228LN, 228LO, 228LP, 228LQ, 228LR, 228LS, 228LT, 228LU, 228LV, 228LW, 228LX, 228LY, 228LZ, 228MA, 228MB, 228MC, 228MD, 228ME, 228MF, 228MG, 228MH, 228MI, 228MJ, 228MK, 228ML, 228MM, 228MN, 228MO, 228MP, 228MQ, 228MR, 228MS, 228MT, 228MU, 228MV, 228MW, 228MX, 228MY, 228MZ, 228NA, 228NB, 228NC, 228ND, 228NE, 228NF, 228NG, 228NH, 228NI, 228NJ, 228NK, 228NL, 228NM, 228NN, 228NO, 228NP, 228NQ, 228NR, 228NS, 228NT, 228NU, 228NV, 228NW, 228NX, 228NY, 228NZ, 228OA, 228OB, 228OC, 228OD, 228OE, 228OF, 228OG, 228OH, 228OI, 228OJ, 228OK, 228OL, 228OM, 228ON, 228OO, 228OP, 228OQ, 228OR, 228OS, 228OT, 228OU, 228OV, 228OW, 228OX, 228OY, 228OZ, 228PA, 228PB, 228PC, 228PD, 228PE, 228PF, 228PG, 228PH, 228PI, 228PJ, 228PK, 228PL, 228PM, 228PN, 228PO, 228PP, 228PQ, 228PR, 228PS, 228PT, 228PU, 228PV, 228PW, 228PX, 228PY, 228PZ, 228QA, 228QB, 228QC, 228QD, 228QE, 228QF, 228QG, 228QH, 228QI, 228QJ, 228QK, 228QL, 228QM, 228QN, 228QO, 228QP, 228QQ, 228QR, 228QS, 228QT, 228QU, 228QV, 228QW, 228QX, 228QY, 228QZ, 228RA, 228RB, 228RC, 228RD, 228RE, 228RF, 228RG, 228RH, 228RI, 228RJ, 228RK, 228RL, 228RM, 228RN, 228RO, 228RP, 228RQ, 228RR, 228RS, 228RT, 228RU, 228RV, 228RW, 228RX, 228RY, 228RZ, 228SA, 228SB, 228SC, 228SD, 228SE, 228SF, 228SG, 228SH, 228SI, 228SJ, 228SK, 228SL, 228SM, 228SN, 228SO, 228SP, 228SQ, 228SR, 228SS, 228ST, 228SU, 228SV, 228SW, 228SX, 228SY, 228SZ, 228TA, 228TB, 228TC, 228TD, 228TE, 228TF, 228TG, 228TH, 228TI, 228TJ, 228TK, 228TL, 228TM, 228TN, 228TO, 228TP, 228TQ, 228TR, 228TS, 228TT, 228TU, 228TV, 228TW, 228TX, 228TY, 228TZ, 228UA, 228UB, 228UC, 228UD, 228UE, 228UF, 228UG, 228UH, 228UI, 228UJ, 228UK, 228UL, 228UM, 228UN, 228UO, 228UP, 228UQ, 228UR, 228US, 228UT, 228UU, 228UV, 228UW, 228UX, 228UY, 228UZ, 228VA, 228VB, 228VC, 228VD, 228VE, 228VF, 228VG, 228VH, 228VI, 228VJ, 228VK, 228VL, 228VM, 228VN, 228VO, 228VP, 228VQ, 228VR, 228VS, 228VT, 228VU, 228VV, 228VW, 228VX, 228VY, 228VZ, 228WA, 228WB, 228WC, 228WD, 228WE, 228WF, 228WG, 228WH, 228WI, 228WJ, 228WK, 228WL, 228WM, 228WN, 228WO, 228WP, 228WQ, 228WR, 228WS, 228WT, 228WU, 228WV, 228WW, 228WX, 228WY, 228WZ, 228XA, 228XB, 228XC, 228XD, 228XE, 228XF, 228XG, 228XH, 228XI, 228XJ, 228XK, 228XL, 228XM, 228XN, 228XO, 228XP, 228XQ, 228XR, 228XS, 228XT, 228XU, 228XV, 228XW, 228XX, 228XY, 228XZ, 228YA, 228YB, 228YC, 228YD, 228YE, 228YF, 228YG, 228YH, 228YI, 228YJ, 228YK, 228YL, 228YM, 228YN, 228YO, 228YP, 228YQ, 228YR, 228YS, 228YT, 228YU, 228YV, 228YW, 228YX, 228YY, 228YZ, 228ZA, 228ZB, 228ZC, 228ZD, 228ZE, 228ZF, 228ZG, 228ZH, 228ZI, 228ZJ, 228ZK, 228ZL, 228ZM, 228ZN, 228ZO, 228ZP, 228ZQ, 228ZR, 228ZS, 228ZT, 228ZU, 228ZV, 228ZW, 228ZX, 228ZY, 228ZZ

SEP 25 1989  
OFFICIAL RECORDS  
SONOMA COUNTY CALIF.

*John J. Anderson*

25

## LOWER RANCH AGRICULTURAL CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT DEED AND AGREEMENT made this 18 day of September, 1989, by and between ROSEWOOD HOLDINGS, INC., a Nevada corporation, herein called "Buyer", and THE SONOMA LAND TRUST, a charitable nonprofit California corporation, herein called "the Trust".

### WITNESS THAT:

WHEREAS, the Trust is the owner of certain real property in Sonoma County, California, herein called either the "Lower Ranch" or the "property", more particularly described in Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, the Trust desires to sell the Lower Ranch for agricultural use and to reserve from such a sale an agricultural conservation easement over the Lower Ranch for the perpetual preservation of its agricultural, scenic and open space values; and

WHEREAS, Buyer, as the agricultural buyer of the Lower Ranch, has agreed to purchase said property subject to this Agricultural Conservation Easement as required by the State Coastal Conservancy in Contract #84-09-84-32-B, dated March 3, 1986, between the State Coastal Conservancy and the Trust; and

WHEREAS, the Trust, whose mailing address in P.O. Box 1211, Sonoma, CA 95476, is a tax-exempt nonprofit organization under Section 501(c)(3) of the Internal Revenue Code, is qualified to do business in the State of California, and has as its primary purpose the preservation, protection and enhancement of land in its natural, scenic, historical, agricultural, forested or open space condition or use; and

WHEREAS, Buyer's, mailing address is 423 Balboa Street,  
San Francisco, Ca. 94116; and

WHEREAS, the Lower Ranch is strategically located along the southern entrance to Sonoma County and its retention in agricultural and open space use is deemed by the State Coastal Conservancy, the Bay Conservation and Development Commission, and the County of Sonoma to be consistent with public policy and in the interest of the people of Sonoma County; and

WHEREAS, the Trust and Buyer intend that the Lower Ranch be maintained in agricultural production and that the open space and scenic values of the Lower Ranch be preserved by the continuation of the agricultural and ranching uses that have proved historically compatible with such values; and

WHEREAS, Buyer is willing to purchase the Lower Ranch subject to this Agricultural Conservation Easement to establish a permanent agricultural preserve on the Lower Ranch and to carry out the Trust's intention to restrict and limit the uses of the Lower Ranch in accordance with the terms,

conditions and purposes set forth in this Easement.

NOW, THEREFORE, for good and valuable consideration, and in consideration of the mutual covenants contained herein, based upon the common law and pursuant to the laws of the State of California including inter alia Sections 815-816 of the California Civil Code, this Agricultural Conservation Easement, hereinafter called the "Easement", consisting of the rights hereinafter enumerated over and across the Lower Ranch, is hereby created on the Lower Ranch in favor of the Trust and shall immediately vest in the Trust upon transfer of the Lower Ranch from the Trust to the Buyer.

1. Purpose. It is the purpose of this Easement to enable the property to remain in productive agricultural use for the production of food, fiber and plant material by preserving and protecting in perpetuity its agricultural values, character and utility. To the extent that the preservation of the scenic and open space values of the Lower Ranch is consistent with such use, it is within the purpose of this Easement to protect those values. This purpose, as further defined by the provisions of this Easement, is generally referred to herein as "the conservation purpose of this Easement."

2. Affirmative Rights Retained. The affirmative rights retained by the Trust are the following:

(a) To identify, to preserve and to protect in perpetuity the agricultural values, character and utility, including the soil and water quality, and the open space and scenic values of the Lower Ranch. (The agricultural values, character and utility, and the open space and scenic values of the property are hereinafter referred to as "the protected values".)

(b) To enter upon the Lower Ranch and to inspect, observe, and study the Lower Ranch for the purposes of (1) identifying the current uses and practices thereon and the baseline condition thereof, and (2) monitoring the uses and practices regarding the Lower Ranch to determine whether they are consistent with the Easement. Such entry shall be permitted once a year, or more often if deemed necessary in the reasonable judgment of the Trust, upon prior notice to Buyer, and shall be made in a manner that will not unreasonably interfere with the proper uses and practices regarding the Lower Ranch. Each entry shall be for only so long a duration as is reasonably necessary to achieve the purposes of this provision, but not necessarily limited to a single physical entry during a single twenty-four hour period.

(c) To enforce the rights herein granted and to prevent or stop, by any legal means, any activity or use of the Lower Ranch which, in the judgment of the Trust, is inconsistent with this Easement and to require restoration of such areas or features as may be damaged by such activities. However, it is the intention of this Easement not to limit Buyer's discretion to employ his/her choice of farm and ranch uses and management practices so long as those uses and practices are consistent with the conservation purposes of this Easement. Except as expressly provided herein Buyer retains exclusive access to and use of the Lower Ranch.

3. Uses and Practices. This Easement shall confine the uses of the Lower Ranch solely to agriculture, ranching, limited residential use associated with the agricultural use of the Lower Ranch, and the other uses which are described herein. Examples of uses and practices regarding the Lower Ranch which are consistent with the conservation purpose of this Easement, and which are hereby expressly permitted, are set forth in Exhibit "B", attached hereto and incorporated herein by this reference. Examples of uses and practices regarding the Lower Ranch which are inconsistent with the conservation purpose of this Easement, and which are hereby expressly forbidden, are set forth in Exhibit "C", attached hereto and incorporated herein by this reference. The uses and practices set forth in both Exhibits "B" and "C" are not necessarily exhaustive recitals of consistent and inconsistent activities, respectively. They are set forth both to establish specific permitted and prohibited activities and to provide guidance in determining the consistency of other activities with the conservation purpose of this Easement.



4. Current Practices and Conditions. The Trust acknowledges by retention of this Easement that the historical and present agricultural uses of the Lower Ranch are compatible with the conservation purpose of this Easement. In order to establish the present condition of the Lower Ranch's protected values, the Trust has contracted with the Petaluma Office of the Soil Conservation Service of the U.S. Department of Agriculture to prepare a Farm Plan for the Lower Ranch, which may be updated at least every ten (10) years, and which will assist the Trust in monitoring the condition of the property. Buyer and the Trust recognize that changes in economic conditions, in horticultural technologies, in locally accepted farm and ranch management practices and in the situation of Buyer may dictate an evolution of agricultural uses of the Lower Ranch, consistent with the conservation purpose of this Easement.

5. Arbitration of Disputes. In the event of a dispute regarding interpretation of this Easement, or as to any permitted or prohibited use or practice hereunder, or any other dispute arising from the provisions of this Easement, the matter may be resolved by binding arbitration according to the following procedures:

- a. Either party may demand arbitration by making such demand in writing upon the other party. The written demand shall contain a list of proposed arbitrators for approval and selection by the other party. If Buyer and the Trust agree upon the selection of one person qualified by education and training to serve as arbitrator, there shall be only one arbitrator.
- b. If no single arbitrator has been named within thirty days after a demand for arbitration, the parties shall appoint a board of three arbitrators, one to be named by Buyer, one to be named by the Trust, and a third neutral arbitrator to be chosen by the two designated arbitrators.
- c. Should either party refuse or neglect to appoint an arbitrator within thirty days, the arbitrator named by the other party shall render a binding decision upon presentation of evidence ex parte.
- d. Unless otherwise agreed by the parties, the arbitration proceedings shall be governed by California Code of Civil Procedure Section 1280 et seq., inclusive of provisions regarding discovery and entry of final judgment. All costs of arbitration, including arbitrator's fees and reasonable attorney's fees, shall be borne by the non-prevailing party. The decision of the arbitrator, or a majority of the arbitrators, shall be binding.
- e. Buyer and the Trust further agree that should any use or practice inconsistent with this Easement be undertaken on the Lower Ranch which results, in the opinion of the arbitrator, in significant degradation of the protected values, the arbitrator shall have the power to order restoration of the affected portions of the Lower Ranch to the condition that existed prior to the undertaking of the inconsistent use or practice. In such a case, the costs of restoration shall be borne by Buyer. For the purposes of this paragraph, degradation attributable to natural disasters, such as fire, flood, mud slides, or windstorms, shall not be subject to the Trust's right to restoration, with the exception of (a) damage to levees and pumps, the repair of which shall be required, and (b) standing flood waters, the pumping out of which shall be required.

6. Enforcement of The Trust. In the event of a violation of any term, condition, covenant, or restriction contained in this Easement, the Trust may institute a suit to enjoin and/or recover damages for such violation. The Trust may take such other action as it deems necessary to insure compliance with the terms, conditions, covenants, and purposes of this Easement, including the right to enter upon the Lower Ranch and cure the condition at the expense of Buyer, including reasonable attorneys' fees, after notification by the Trust to Buyer of the condition.

Any failure to act by the trust shall not be deemed a waiver or forfeiture of the Trust's right to enforce any term, condition, covenant, or purpose of this Easement in the future.

7. Approval Criteria. In cases where the Trust's approval or consent is required hereunder, such approval or consent shall be based upon compliance with the provisions of this Easement, the capability of the proposed action to preserve and enhance the features protected by this Easement, the manner in which the proposed action is to be carried out, the likely effect of the proposed action upon the features protected by this Easement, and on any other basis which the Trust shall reasonably determine to be in furtherance of the purposes of this Easement. Approval or disapproval shall be within the sole discretion of the Trust and may be granted upon conditions which tend to further the purposes of this Easement.

8. Approval Process. In the event the Buyer desires to solicit the approval or consent of the Trust pursuant to this Easement, the Buyer shall submit a written description of the proposed action. The Trust shall issue its written approval, disapproval, consent, or refusal of consent, within sixty (60) calendar days of the receipt of the Buyer's written request. Upon the completion of any such action on the Property, the Trust shall, at the request of the Buyer, inspect the Property and, if the action was performed in accordance with the terms of this Easement and the approvals or consents issued by the Trust hereunder, issue a certificate to that effect, dated as of the time of inspection. The Trust shall be fully reimbursed for all costs, including but not limited to professional fees of surveyors, attorneys, consultants and accountants, incurred in servicing the Buyer's requests.

9. Costs and Liabilities Related to Property. The Buyers agree to bear all costs and liabilities of any kind related to the operation, upkeep, and maintenance of the Property and do hereby indemnify and hold the Trust harmless therefrom. Without limited the foregoing, the Buyer agrees to pay any and all real property taxes and assessments levied by competent authority on the Property. The Buyer shall be solely responsible for any costs related to the maintenance of general liability insurance covering acts on the Property. The Trust shall have no responsibility whatever for the operation of the Property, the monitoring of hazardous conditions thereon, or the protection of the Buyer, the public, or any third parties from risks relating to conditions on the Property, the Buyer hereby indemnifying and holding the Trust harmless from and against any damage, liability, claim, or expense (including attorney's fees), relating to such matters. Without limiting the foregoing, the Trust shall not be liable to Buyer or any other person or entity in connection with hereunder, or in connection with any entry upon the Property occurring pursuant to this Agreement, or on account of any claim, liability, damage, or expense suffered or incurred by or threatened against the Buyer or any other person or entity.

10. Access. Nothing contained herein shall be construed as affording the public access to any portion of the land subject to this Easement. Nothing in this Easement shall be construed to preclude Buyer's right to grant access to third parties across the Lower Ranch, provided that such access is allowed in a reasonable manner and is not inconsistent with the conservation purpose of this Easement.

11. Subsequent Transfer of the Trust's Interest. The Trust agrees that it will hold this easement exclusively for conservation purposes and that it will not subsequently transfer its rights and obligations hereunder except to another public agency or nonprofit organization qualified to hold such interests under applicable state and federal laws, and committed to holding this Easement exclusively for conservation purposes.

Provided, however, that if the Trust should seek to abandon the Easement or if the existence of the Trust is terminated for any reason, title to this Easement shall immediately vest in the State of California, acting by and through the State Coastal Conservancy, or in another public agency or nonprofit organization approved by the Executive Officer of the State Coastal Conservancy which agrees to accept title to this Easement. The vesting of title to this Easement in the State Coastal Conservancy or other entity pursuant to this paragraph shall be evidenced by recordation of a Notice by the State Coastal Conservancy of a Certificate of Acceptance to that effect in the official records of Sonoma County.

12. Grant in Perpetuity. The Easement herein granted shall be a burden upon and shall continue as a restrictive covenant and equitable servitude running in perpetuity with the Lower Ranch and shall bind Buyer, his/her successors, lessees, executors, representatives and assigns forever.

13. Condemnation. In the event that the Lower Ranch or some portion thereof is condemned for public use, Buyer and the Trust shall be entitled to such compensation for the taking as they would have been entitled to had the property not been burdened by this easement, with the proceeds in excess of Buyer's basis being shared equally by Buyer and the Trust.

14. Subsequent Deeds and Leases. Buyer agrees that reference to this Easement will be made in any subsequent deed, or other legal instrument, by means of which any interest in the Lower Ranch (including but not limited to a leasehold interest) is conveyed, that Buyer will attach a copy of this Easement to any such instrument, and that Buyer will notify the Trust in writing within ten (10) days of any such conveyance and furnish the Trust with a true copy of such deed or instrument.

15. Notices. All notices, consents, approvals, or other communications hereunder shall be in writing and shall be deemed properly given if sent by United States certified mail, return receipt requested, addressed to the appropriate party or successor at the address set forth above, or at such other address as may be substituted by like notice.

16. Severability. It is the intention of the parties that this Easement shall be construed and applied to promote its underlying purposes and that if any provision of this Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Easement and the application of such provisions to persons or circumstances, other than those as to which it is found to be invalid, shall not be affected thereby.

17. Successors and Assigns. The terms Buyer and the Trust wherever used herein, and any pronouns used in place thereof, shall mean and include the above-named Buyer and his/her heirs, personal representatives, lessees, executors, successors, and assigns and the above-named Trust and its successors and assigns, respectively.

18. Integration. This Easement is the final and complete expression of the agreement between the parties and any and all prior or contemporaneous agreements written or oral are merged into this written instrument.



EXHIBIT "B"

PERMITTED USES AND PRACTICES

The following uses and practices, though not necessarily an exhaustive recital of consistent uses and practices, are permitted under this Easement, and they are not to be precluded, prevented, or limited by this Easement provided that all applicable governmental permits are properly obtained:

1. To continue ranching and farming activity consistent with the conservation purpose of this Easement, including the purchase, pasturing, grazing, feeding, care and sale of livestock for the production of food and fiber, the planting, raising, harvesting and sale of agricultural crops of every nature and description; provided, however, that such activities shall not result in significant degradation of any soil, surface or subsurface waters.
2. To maintain and repair existing structures, fences, ditches, sloughs, pumps, levees, and other improvements on the Lower Ranch. Additional structures and facilities reasonably necessary to the ranching and agricultural activities contemplated by and consistent with the conservation purpose of this Easement (including solar energy, bio-gas, other energy-efficient facilities, or temporary quarters for farmworkers), shall be permitted, provided that Buyer obtains the prior express written approval of the Trust for the construction or placement of any such additional structure or facility. Buyer shall provide the Trust written notice of Buyer's intention to undertake such construction, together with information of its size, function, capacity and location, not less than forty-five (45) days prior to the commencement thereof. the Trust's consent shall be withheld only upon its finding that the proposed construction would not be consistent with the conservation purpose of this Easement. Additional fencing deemed by Buyer to be reasonably necessary to ranching and agricultural activities may be constructed without the Trust's consent. In the event of destruction, deterioration or obsolescence of any structures or fences, whether existing at the date hereof or constructed subsequently pursuant to the provisions of this paragraph, Buyer may replace said structures or fences with ones of similar size, function, capacity and location. In the event of destruction, deterioration or obsolescence of ditches, sloughs, levees or pumps, whether existing at the date hereof or constructed subsequently pursuant to the provisions of this paragraph, Buyer must replace said improvements in a timely manner with ones of similar size, function, capacity and location for the protection of the agricultural values on Lower Ranch and on surrounding properties.
3. To develop and maintain such water resources on the Lower Ranch as are necessary or convenient for ranching, agricultural, irrigation, and residential uses in a manner consistent with the conservation purpose of this Easement.
4. To use government-approved agri-chemicals, including, but not limited to, fertilizers and biocides in those amounts and with that frequency of application necessary to accomplish reasonable agricultural purposes. Such use shall be carefully circumscribed near surface water and during periods of high ground water.
5. To control predatory and problem animals by the use of selective control techniques.
6. To utilize the Lower Ranch for passive recreational or educational purposes including, but not limited to, hiking, horseback riding, fishing, and nature studies.
7. To engage in the production and/or processing of food and fiber products and by-products produced from ranching and agricultural activities conducted on the Lower Ranch in a manner consistent with the conservation purpose of this Easement.

45  
PM  
MUST

EXHIBIT "C"

PROHIBITED USES AND PRACTICES

The following uses and practices, though not necessarily an exhaustive recital of inconsistent uses and practices, are inconsistent with the purposes of this Easement and shall be prohibited upon or within the Lower Ranch:

1. The impairment of the protected values, including but not limited to productive agricultural use and scenic and open space values, except as otherwise provided herein.
2. The establishment of any nonagricultural commercial or industrial uses or the construction, placing, or erection of any sign (other than is reasonably necessary for the identification of the Lower Ranch or to advertise its sale or the sale of its products) or billboards.
3. The construction, reconstruction, or replacement of any structure except as provided in paragraph 2 of Exhibit "B".
4. The division, subdivision, or de facto subdivision of the Lower Ranch.
5. The use of motorized vehicles off roadways or on levees, except for ranch management purposes.
6. The establishment or maintenance of any commercial feedlot except with express permission of the Trust and of size not to exceed 10 acres. A commercial feedlot shall be defined for the purposes of this Easement as a confined area or facility, within which the land is not grazed or cropped at least annually, used for the feeding and fattening of livestock.
7. The relocation of any new roadway or levee; provided, however, that Trust shall consent to the construction of any roadway or levee that is planned to minimize the impact on the agricultural, open space, and natural features of the Lower Ranch and which is not constructed within wetlands and that such consent shall not be unreasonably withheld.
8. The dumping or accumulation of trash, ashes, garbage, waste or other offensive or polluting or toxic material on the Lower Ranch, provided, however, that agricultural products and by-products may be placed or stored on the land, so long as such placement or storage is consistent with the public health and sound agricultural practices.
9. Ranching, agricultural or other uses, otherwise permitted under this Easement, which result in significant degradation of soil or water quality.

# Sonoma Baylands Region

